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FISCAL IMPACT STATEMENT

LS 7028

BILL NUMBER: SB 382

NOTE PREPARED: Feb 22, 2010

BILL AMENDED: Feb 22, 2010

SUBJECT: Illiana Expressway.

FIRST AUTHOR: Sen. Charbonneau

FIRST SPONSOR: Rep. Pelath

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Illiana Expressway*: For purposes of statutes concerning approval of the location of a tollway or the designation of a state highway as a tollway, the bill allows the designation of the Illiana Expressway as a tollway (current law prohibits such a designation without legislative authorization). The bill makes the following changes in the statutes governing public-private partnership (P3) agreements by the Indiana Finance Authority (IFA) or the Indiana Department of Transportation (INDOT): It authorizes a P3 agreement for a project concerning the Illiana Expressway (current law prohibits such an agreement without legislative authorization) that would permit an operator to impose tolls for the operation of motor vehicles.

It specifies that the common construction wage statute applies to a project for the Illiana Expressway.

Public-Private Partnership Agreements: This bill has the following provisions concerning P3 agreements:

It requires the preparation of an economic impact study before a request for proposals (RFP) is issued.

It requires a public hearing concerning the study on the proposed project.

After the preliminary selection of an operator, it requires a public hearing on the preliminary selection and the P3 agreement.

It also requires various postings and notices before the hearing.

It provides that a P3 agreement must: (1) require the completion of all environmental analyses required by

state and federal law; and (2) contain a provision, to be negotiated by the IFA or INDOT with the operator on behalf of local units of government, concerning a procedure for claiming reimbursement for certain expenses.

Eminent Domain Laws: The bill provides that the eminent domain laws in effect as of January 1, 2010, apply to the use of eminent domain for a project by the IFA or INDOT and to the rights of property owners affected by such a use of eminent domain.

The bill also prohibits the IFA and INDOT from using eminent domain to acquire real property in the vicinity of an interchange but outside the right-of-way for the project.

Ownership: In the INDOT statute, The bill provides that the public-private agreement must specify that ownership of the project is to be in the name of the state (this requirement is already in the IFA statute).

It makes conforming changes.

Effective Date: Upon passage.

Explanation of State Expenditures: (Revised) *Summary:* The bill could increase costs for projects undertaken as public-private partnerships by requiring a feasibility study and an economic impact study prior to issuing a request for proposal and by requiring an additional public hearing prior to or after completion of the economic impact study and increasing the number of meetings that may take place after the preliminary selection of the operator. Additionally, the requirement for the IFA or INDOT to negotiate on behalf of local units of government concerning the expenses and losses resulting from the construction project may affect the overall profit margin of the project.

Additional Details:

(Revised) *Feasibility Study and Economic Impact Study:* A feasibility study is a baseline look at a potential project to determine if the project should go further. A feasibility study was completed for the Illiana project in about one year by an outside consultant with an appropriation for the project of up to \$1 M. The funds for the study came from the INDOT consulting budget.

Most projects require a more in-depth National Environmental Policy Act (NEPA) study as the result of connecting to an existing highway or by triggering a federal action, such as needing permits from the Army Corps of Engineers to cross waterways. In general, a NEPA study costs about 10% to 25 % of the total project cost. Part of the NEPA study is a community impact assessment, which includes looking at the social and economic impact that the transportation project will have. The federal statute governing this process indicates some items that may be assessed include impact on air, noise, and water pollution; destruction or disruption of man-made and natural resources, aesthetic values, community cohesion, and the availability of public facilities and services; adverse employment effects, and tax and property value losses; injurious displacement of people, businesses, and farms; and disruption of desirable community and regional growth.

The bill requires an economic impact study, including the economic impact on existing commercial and industrial development; potential impact on employment; potential for future development; fiscal impacts on revenues to local units of government, and demands on government services.

To the extent that the preliminary studies required by the bill reduce or eliminate additional analysis to satisfy federally required studies, the costs of these requirements for P3 projects will be minimal or neutral. If a P3 project would not have triggered a federally required study, there may be additional consulting costs for a project.

(Revised) *Public Meetings*: The bill requires an additional public meeting be held in the county in which a proposed P3 project is to take place. For a project undertaken by the IFA, the meeting would take place after the feasibility study and the economic impact study have been completed. For the INDOT, the public meeting must take place before the feasibility study and economic impact study are undertaken. If a project will take place in multiple counties, multiple meetings will be required. Also, current statute requires a meeting after the preliminary selection of the operator. Under the bill, this meeting would take place in the county within which the proposed project is to take place, increasing the number of meetings that will take place. Costs incurred for public meetings include public notices in a newspaper of general circulation (for which rates are set in statute); personnel and consultation costs; and potentially some facilities expense.

(Revised) *Negotiations on Behalf of Local Units*: As part of a P3 agreement, the bill requires the IFA or the INDOT to negotiate on behalf of units of local government to establish a procedure that determines the expenses and losses of revenue incurred by those units and a procedure to resolve disputes concerning the payment of claims. Depending on the procedures negotiated, the total costs of the project could increase, thereby reducing the profit margin (or breakeven point) of the project. The effect of this provision on state revenue from a P3 project is uncertain and would depend on what is negotiated.

(Revised) *Eminent Domain*: Any amendments to the current eminent domain statute made after December 31, 2009, would not apply to a P3 project. Any fiscal impact of using the statute in effect on January 1, 2010, would depend on the changes made to the eminent domain statute.

Explanation of State Revenues: Under current law, the Governor, the INDOT, or an operator, without the approval of the General Assembly, may not approve the location of a tollway (a project of the INDOT) or a toll road (a project of the Indiana Finance Authority), issue a request for proposal or enter into a public-private agreement, or determine that a highway should become a tollway other than on I-69 between I-64 and Martinsville. Under the bill, the Illiana Expressway, a limited access facility connecting I-65 and an interstate highway in Illinois, would be allowed as a tollway or a tollroad without further legislative approval.

Also, the bill would require an operator or any contractor or subcontractor of the operator who enters into a public-private agreement for construction of the Illiana Expressway as a toll road project to be subject to the common construction wage statute. Under current law, a toll road project is not subject to this statute. There are no data to indicate how this provision may affect the number of operators bidding for the Illiana Expressway project, or the revenue received from the project.

Background on the Illiana Expressway: A preliminary feasibility study was completed for the Illiana Expressway and presented to the General Assembly in July 2009. Among the factors subject to a public opinion survey by the study, a favorable response was given to both tolling and constructing the project as a public-private partnership. This connector would address traffic congestion around the Borman Expressway, I-80/I-94, which is out of available land to expand. The proposal for the Illiana Expressway is for the route to be about 25 to 30 miles long. The bill would allow development of this expressway as a tollway or tollroad.

Explanation of Local Expenditures: (Revised) The bill could provide a process for local units of government that incur additional expenses or losses of revenue to be reimbursed for disputed claims under a P3 agreement.

Explanation of Local Revenues:

State Agencies Affected: INDOT; IFA.

Local Agencies Affected:

Information Sources: <http://www.in.gov/legislative/igareports/agency/reports/INDOT14.pdf>; Chris Kiefer, INDOT, January 28, 2010; <http://www.environment.fhwa.dot.gov/projdev/tdmcia.asp>; http://www.ciatrans.net/cia_moreinfo.html#1.

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